IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 5430 of 2005

Prakash Vasudeo Barapatre... Petitioner
vs.
State of Maharashtra and ors. ..... Respondents

Mr. V. A. Madne i/b. R.K. Mendadkar for Petitioner
Mrs. A. R.S. Baxi for Respondent nos.2&3.
Mr. R. D. Rane for Respondent no.1.

CORAM: **F. I. REBELLO & ROSHAN DALVI JJ.**
Date: 16/11/2005

P.C.

The matter was on board on Monday. At the request of learned counsel for the Petitioner the matter was adjourned for today. The matter is first on board. Learned counsel holding for Mr. R.K. Mendadkar, prays that the matter be kept back. It is not possible as even before the vacation learned counsel for the Petitioner has taken five adjournments on various dates.

1. The Petitioner was employed on the basis that he belonged to a reserved category. On his application being

forwarded for verification to the Caste Scrutiny Committee the same was rejected. The Petitioner thereafter preferred petition before the Nagpur Bench of this court being writ petition no. 2961 of 2004. That petition was disposed off with the direction to the Respondent to decide the representation made by the Petitioner within a period of eight weeks.

2. Learned counsel for the Petitioner relied upon the judgment in the case of State of Maharashtra vs. Milind and ors. [2001 SCC (L&S) 117, to contend that his services to be protected. Reliance was also placed on various judgments of this court wherein basing on the judgment of the Milind's case (supra) this court has granted protection. We have gone through the judgment in Milind's case (supra). We do not find any proposition warranting protection carved out from the observation the Apex Court has taken. The Apex Court in para 35 of its judgment has set out "..... But, unfortunately, even some better-placed persons by producing false certificates

as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognizing and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution."

It may only be pointed out that in that case the

student was admitted to MBBS course. During the pendency of the proceedings the student had passed the examination. In those circumstances the Apex Court noted that no useful purpose will be served if the admission is annulled. The attention of various Division Benches of this court was not invited to the judgment in R. Vishwanatha Pillai vs. State of Kerala and ors. [2004 SCC (L&S) 350]. The Apex Court therein also considered the issue of protection of services. The judgment in Milind's case (supra) was also considered.

We may refer to para 15 of the judgment. In that case the issue was applicability of Article 311 while terminating the services of the appellant. This is how the Apex Court answered the issue:

"This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste Community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His

appointment was no appointment in the eye of the law. He cannot claim a right to the posts he had usurped; the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. ....” “.... The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practicing fraud or deceit, such an appointment is no appointment in law, in service and in such a situation

Article 311 of the Constitution is not attracted at all."

This position in law as declared by the Apex Court has been reiterated once again in Bank of India and anr. vs. Avinash D. Mandivikar and ors. [(2005) 7 SCC 690. This is how the Apex Court answered the issue:

" Respondent 1 employee obtained appointment in the service on the basis that he belonged to a Scheduled Tribe. When the clear finding of the Scrutiny Committee is that he did not belong to the Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eye of law. There is absolutely no justification for his claim in respect of the post he usurped, as the same was meant for a reserved candidate."

The Apex Court therein had referred to the judgment in R. Vishwanatha Pillai's case (supra). The Apex Court once again clarified that the protection in Milind's case (supra) cannot be extended to Respondent no.1 as the protection in Milind's case was given under peculiar facts of that case.

3. Considering the law as declared in the judgment of the Apex Court in R. Vishwanatha Pillai (supra) and the judgment in Bank of India (supra), the Petitioner cannot claim any benefit of protection and consequently Respondent no.2 was right in rejecting the representation made by the Petitioner.

Rule discharged with no order as to costs.

(F. I. REBELLO J.)

(ROSHAN DALVI J.)